

AMENDED IN SENATE JUNE 18, 2012  
AMENDED IN SENATE JANUARY 18, 2012  
AMENDED IN SENATE JANUARY 4, 2012  
AMENDED IN SENATE JUNE 29, 2011  
AMENDED IN SENATE JUNE 22, 2011  
AMENDED IN ASSEMBLY APRIL 25, 2011  
AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1301**

---

**Introduced by Assembly Member Hill**  
(Principal coauthor: Senator Padilla)

February 18, 2011

---

An act to amend Section 22958 of, and to repeal and add Section 22974.8 of, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1301, as amended, Hill. Retail tobacco sales: STAKE Act.

Existing law, the California Cigarette and Tobacco Licensing Act of 2003, requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California. Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in

which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia.

Under existing law, violations of the STAKE Act or the above-described misdemeanor provision result in board action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes. Existing law makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes. Under existing law, enforcing agencies assess civil penalties in prescribed amounts against a person, firm, or corporation that sells, gives, or in any way furnishes to a person under 18 years of age specified tobacco products. Moneys from these penalties are deposited in the Sale of Tobacco to Minors Control Account in the State Treasury.

This bill would remove the schedule for board action in response to the occurrence of a violation, as defined, of the STAKE Act or the misdemeanor provision. The bill would declare that these changes would not result in the limitation or termination of ongoing board actions. The bill would require the board to suspend or revoke a retailer's license, as specified, for the 3rd, 4th, or 5th violation. The bill would require the assessment of an additional civil penalty, as specified, to be deposited in the existing Cigarette and Tobacco Products Compliance Fund, which would be made available, upon appropriation by the Legislature, to fund these suspension and revocation activities.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) According to the American Cancer Society, almost 90
- 4 percent of adults who are regular smokers started at or before age
- 5 19.
- 6 (b) A 2009 survey from the United States Centers for Disease
- 7 Control and Prevention found that nearly one-half of high school
- 8 students had tried cigarette smoking and more than one out of four
- 9 high school students were current tobacco users.

1 (c) Smoking-related diseases remain the leading cause of  
2 preventable death in the United States, claiming the lives of  
3 438,000 Americans annually.

4 (d) According to the State Department of Public Health's  
5 California Tobacco Control Program survey, 74 percent of youth  
6 access enforcement agencies reported issuing warnings to  
7 merchants selling tobacco products to minors in 2006.

8 (e) The California Tobacco Control Program survey also found  
9 that law enforcement agencies continued to rank the suspension  
10 or revocation of licenses and civil and criminal penalties for owners  
11 and clerks as effective strategies to reduce youth access to tobacco.

12 SEC. 2. Section 22958 of the Business and Professions Code  
13 is amended to read:

14 22958. (a) An enforcing agency may assess civil penalties  
15 against any person, firm, or corporation that sells, gives, or in any  
16 way furnishes to another person who is under the age of 18 years,  
17 any tobacco, cigarette, cigarette papers, any other instrument or  
18 paraphernalia that is designed for the smoking or ingestion of  
19 tobacco, products prepared from tobacco, or any controlled  
20 substance, according to the following schedule: (1) a civil penalty  
21 of from four hundred dollars (\$400) to six hundred dollars (\$600)  
22 for the first violation, (2) a civil penalty of from nine hundred  
23 dollars (\$900) to one thousand dollars (\$1,000) for the second  
24 violation within a five-year period, (3) a civil penalty of from one  
25 thousand two hundred dollars (\$1,200) to one thousand eight  
26 hundred dollars (\$1,800) for a third violation within a five-year  
27 period, (4) a civil penalty of from three thousand dollars (\$3,000)  
28 to four thousand dollars (\$4,000) for a fourth violation within a  
29 five-year period, or (5) a civil penalty of from five thousand dollars  
30 (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within  
31 a five-year period.

32 (b) In addition to the civil penalties described in subdivision  
33 (a), upon the assessment of a civil penalty for the third, fourth, or  
34 fifth violation, the department, within 30 days of a final  
35 administrative adjudication or payment of the civil penalty for an  
36 uncontested violation, shall notify the State Board of Equalization  
37 of the violation. The State Board of Equalization shall then assess  
38 a civil penalty of two hundred dollars (\$200) ~~and suspend and~~  
39 *suspend* or revoke a license issued pursuant to Chapter 2

(commencing with Section 22972) of Division 8.6 in accordance with the following schedule:

(1) A 45-day suspension of the license for a third violation at the same location within a five-year period.

(2) A 90-day suspension of the license for a fourth violation at the same location within a five-year period.

(3) Revocation of the license for a fifth violation at the same location within a five-year period.

(c) (1) For each suspension or revocation pursuant to subdivision (b), the civil penalty of two hundred dollars (\$200) assessed pursuant to that subdivision, notwithstanding Section 22953, shall be deposited into the Cigarette and Tobacco Products Compliance Fund established pursuant to Section 22990. Moneys from that civil penalty deposited into this fund shall be made available to the ~~board~~ *State Board of Equalization*, upon appropriation by the Legislature, for the purposes of meeting its duties under subdivision (b).

(2) The department shall, upon request, provide to the State Board of Equalization information concerning any person, firm, or corporation that has been assessed a civil penalty for violation of the STAKE Act pursuant to this section when the department has notified the State Board of Equalization of the violation.

(d) The enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or a person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(e) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars (\$200) for the first offense and five hundred dollars (\$500) for each additional violation.

(f) An enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that advertises or causes to be advertised a tobacco product on an outdoor billboard in violation of Section 22961.

1 (g) If a civil penalty has been assessed pursuant to this section  
2 against a person, firm, or corporation for a single, specific violation  
3 of this division, the person, firm, or corporation shall not be  
4 prosecuted under Section 308 of the Penal Code for a violation  
5 based on the same facts or specific incident for which the civil  
6 penalty was assessed. If a person, firm, or corporation has been  
7 prosecuted for a single, specific violation of Section 308 of the  
8 Penal Code, the person, firm, or corporation shall not be assessed  
9 a civil penalty under this section based on the same facts or specific  
10 incident upon which the prosecution under Section 308 of the Penal  
11 Code was based.

12 (h) (1) In the case of a corporation or business with more than  
13 one retail location, to determine the number of accumulated  
14 violations for purposes of the penalty schedule set forth in  
15 subdivision (a), violations of this division by one retail location  
16 shall not be accumulated against other retail locations of that same  
17 corporation or business.

18 (2) In the case of a retail location that operates pursuant to a  
19 franchise as defined in Section 20001, violations of this division  
20 accumulated and assessed against a prior owner of a single  
21 franchise location shall not be accumulated against a new owner  
22 of the same single franchise location for purposes of the penalty  
23 schedule set forth in subdivision (a).

24 (i) Proceedings under this section shall be conducted in  
25 accordance with Section 131071 of the Health and Safety Code,  
26 except in cases where a civil penalty is assessed by an enforcing  
27 agency other than the department, in which case, proceedings shall  
28 be conducted in accordance with the procedures of that agency  
29 that are consistent with Section 131071 of the Health and Safety  
30 Code.

31 SEC. 3. Section 22974.8 of the Business and Professions Code  
32 is repealed.

33 SEC. 4. Section 22974.8 is added to the Business and  
34 Professions Code, to read:

35 22974.8. (a) Except as provided in subdivision (b), the board  
36 shall suspend or revoke the license of a retailer as directed by the  
37 State Department of Public Health pursuant to subdivision (b) of  
38 Section 22958.

39 (b) Notwithstanding any other provision regarding the  
40 suspension or revocation of a license pursuant to this part, the

1 board shall provide a licensee with at least 10 days' written notice  
2 of a pending suspension or revocation pursuant to this section and  
3 an opportunity to appeal the suspension or revocation and the civil  
4 penalty assessed pursuant to subdivision (b) of Section 22958 only  
5 to correct a mistake or clerical error. The board shall not accept  
6 or consider an appeal of suspension or revocation under this section  
7 if the appeal is founded upon the grounds of whether the retailer,  
8 or any employee or agent of the retailer, violated the STAKE Act  
9 (Division 8.5 (commencing with Section 22950)) for which  
10 violation civil penalties are imposed by the State Department of  
11 Public Health pursuant to subdivision (a) of Section 22958. Nothing  
12 in this section shall be construed to prevent the board from  
13 modifying its action on its own to correct a mistake or clerical  
14 error.

15 SEC. 5. Section 308 of the Penal Code is amended to read:

16 308. (a) (1) Every person, firm, or corporation that knowingly  
17 or under circumstances in which it has knowledge, or should  
18 otherwise have grounds for knowledge, sells, gives, or in any way  
19 furnishes to another person who is under the age of 18 years any  
20 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other  
21 preparation of tobacco, or any other instrument or paraphernalia  
22 that is designed for the smoking or ingestion of tobacco, products  
23 prepared from tobacco, or any controlled substance, is subject to  
24 either a criminal action for a misdemeanor or to a civil action  
25 brought by a city attorney, a county counsel, or a district attorney,  
26 punishable by a fine of two hundred dollars (\$200) for the first  
27 offense, five hundred dollars (\$500) for the second offense, and  
28 one thousand dollars (\$1,000) for the third offense.

29 Notwithstanding Section 1464 or any other provision of law, 25  
30 percent of each civil and criminal penalty collected pursuant to  
31 this subdivision shall be paid to the office of the city attorney,  
32 county counsel, or district attorney, whoever is responsible for  
33 bringing the successful action, and 25 percent of each civil and  
34 criminal penalty collected pursuant to this subdivision shall be  
35 paid to the city or county for the administration and cost of the  
36 community service work component provided in subdivision (b).

37 Proof that a defendant, or his or her employee or agent,  
38 demanded, was shown, and reasonably relied upon evidence of  
39 majority shall be defense to any action brought pursuant to this  
40 subdivision. Evidence of majority of a person is a facsimile of or

1 a reasonable likeness of a document issued by a federal, state,  
2 county, or municipal government, or subdivision or agency thereof,  
3 including, but not limited to, a motor vehicle operator's license, a  
4 registration certificate issued under the federal Selective Service  
5 Act, or an identification card issued to a member of the Armed  
6 Forces.

7 For purposes of this section, the person liable for selling or  
8 furnishing tobacco products to minors by a tobacco vending  
9 machine shall be the person authorizing the installation or  
10 placement of the tobacco vending machine upon premises he or  
11 she manages or otherwise controls and under circumstances in  
12 which he or she has knowledge, or should otherwise have grounds  
13 for knowledge, that the tobacco vending machine will be utilized  
14 by minors.

15 (2) For purposes of this section, "blunt wraps" means cigar  
16 papers or cigar wrappers of all types that are designed for smoking  
17 or ingestion of tobacco products and contain less than 50 percent  
18 tobacco.

19 (b) Every person under the age of 18 years who purchases,  
20 receives, or possesses any tobacco, cigarette, or cigarette papers,  
21 or any other preparation of tobacco, or any other instrument or  
22 paraphernalia that is designed for the smoking of tobacco, products  
23 prepared from tobacco, or any controlled substance shall, upon  
24 conviction, be punished by a fine of seventy-five dollars (\$75) or  
25 30 hours of community service work.

26 (c) Every person, firm, or corporation that sells, or deals in  
27 tobacco or any preparation thereof, shall post conspicuously and  
28 keep so posted in his, her, or their place of business at each point  
29 of purchase the notice required pursuant to subdivision (b) of  
30 Section 22952 of the Business and Professions Code, and any  
31 person failing to do so shall, upon conviction, be punished by a  
32 fine of fifty dollars (\$50) for the first offense, one hundred dollars  
33 (\$100) for the second offense, two hundred fifty dollars (\$250) for  
34 the third offense, and five hundred dollars (\$500) for the fourth  
35 offense and each subsequent violation of this provision, or by  
36 imprisonment in a county jail not exceeding 30 days.

37 (d) For purposes of determining the liability of persons, firms,  
38 or corporations controlling franchises or business operations in  
39 multiple locations for the second and subsequent violations of this

1 section, each individual franchise or business location shall be  
2 deemed a separate entity.

3 (e) Notwithstanding subdivision (b), any person under 18 years  
4 of age who purchases, receives, or possesses any tobacco, cigarette,  
5 or cigarette papers, or any other preparation of tobacco, any other  
6 instrument or paraphernalia that is designed for the smoking of  
7 tobacco, or products prepared from tobacco, while participating  
8 in the enforcement activities that comply with the guidelines  
9 adopted pursuant to subdivisions (c) and (d) of Section 22952 of  
10 the Business and Professions Code is immune from prosecution  
11 for that purchase, receipt, or possession.

12 (f) It is the Legislature's intent to regulate the subject matter of  
13 this section. As a result, no city, county, or city and county shall  
14 adopt any ordinance or regulation inconsistent with this section.

15 SEC. 6. No change made by the repeal and addition of Section  
16 22974.8 of the Business and Professions Code pursuant to Sections  
17 3 and 4 of this act shall result in the limitation or termination of  
18 an ongoing action by the State Board of Equalization under that  
19 section.